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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER	
FOLEY, SHANON A	
ART UNIT	PAPER NUMBER
1619	

MAIL DATE	DELIVERY MODE
05/22/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/825,154	SABBAGH ET AL.	
	Examiner	Art Unit	
	SHANON A. FOLEY	1619	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *2/28/08*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-23* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-23* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *08/29/07 and 2/28/08*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

The Group and/or Art Unit of your application has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Group Art Unit 1619, Examiner Foley.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hirata (US 6,521,219), Braida-Valerio et al. (US 6,076,530) and Maubru et al. (US 6,303,110) for reasons of record.

Applicant argues that there would have been no motivation to add the ceramides of Braida-Valerio's et al. steam treatment to the process for applying a heating iron to the peptide nourishing compositions of Hirata et al. Applicant further argues that there is nothing in Hirata that would suggest a desire to augment the composition of Hirata to produce softer and smoother hair.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5

USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Braida-Valerio et al. specifically teach that application of the particular ceramides taught treats and protects hair fibers from damage that may occur during mechanical or chemical treatments, see column 1, lines 16-25 and 45-47. Braida-Valerio et al. also teach that application of the ceramides taught improves the softness and smoothness of the hair. Therefore, one of ordinary skill in the art at the time the invention was made would have been motivated to apply the ceramides of Braida-Valerio et al. to the method of Hirata to treat and protect hair during subsequent mechanical and/or chemical treatments. Further, one of ordinary skill in the art at the time the invention was made would have been further motivated to apply the ceramides of Braida-Valerio et al. to the method of Hirata to increase the smoothness or softness of hair.

Applicant also argues that there is nothing in Braida-Valerio et al. that would suggest the use of ceramide compositions and a process involving a heating iron instead of steam.

Applicant's arguments have been fully considered, but are found unpersuasive. Braida-Valerio et al. do not limit the apparatus supplying the appropriately temperate steam. Hirata clearly discuss a steam-heating process using an iron, see column 4, line 30 to column 5, line 25 for example. Therefore, Hirata clearly demonstrates a conventional apparatus to adequately deliver heat at appropriate temperatures using steam-heat treatment is with the use of a steam iron.

Applicant states that the instant claims are an improvement over the teachings of Hirata since the instant disclosure teaches that application of amino acids to hair do not entirely ameliorate existing damage.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.,* 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Applicant is reminded that the basis for an obvious-type rejection flows from the combination of teachings in the prior art. The combination of teachings in the prior art of Hirata, Braida-Valerio et al. and Maubru et al. are all in the same field of endeavor for improving hair quality using heat and/or ceramides. Maubru et al. teach that the most common technique for permanently reshaping the hair comprises application of a reducing and then oxidizing agent and heating the hair after application of the ceramide, see column 2, lines 52-63 and column 6, line 46 to column 7, line 8. Hirata teaches ameliorating hair damage by applying an amino acid composition followed by sandwiching the hair between heated plates that range in temperature between 130-180°C (abstract; col. 2, lines 17-18). Braida-Valerio et al. teach a process for treating hair comprising applying a composition containing at least one ceramide and heating the hair between 85-150°C (abstract; col. 2, lines 16-17). Therefore, with respect to temperature, there is consensus in the prior art that application of ceramides reduces hair damage (taught by Maubru et al. and Braida-Valerio et al.) and that temperatures ranging between 130°C-150°C are sufficient for treating damaged hair (taught by Braida-Valerio et al. and Hirata). Therefore, it is evident that a method of applying ceramides followed by exposure to temperatures ranging between 130°C-150°C to treat damaged hair would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made, absent unexpected results to the contrary.

Applicant supplies a Declaration under 37 CFR § 1.132 by Laurence Paul to demonstrate unexpected results of the instant invention.

The Declaration and the data submitted therein have been fully considered, but are insufficient to overcome the rejection of record. In the Declaration, a first lock of hair was processed in accordance with the instant claims. A second lock of hair was subjected to the process described by Braida-Valerio et al. However, this is an experimental flaw in the Declaration since the rejection does not rely on the teachings of Braida-Valerio et al. alone, but the combination of teachings from Hirata, Braido-Valerio et al. and Maubru et al. Regarding the results of the Declaration in section IV, the locks treated by separate means is does not prove that one lock is smoother than the other since the tactile smoothing data of 3.80 compared with 3.00 is not significantly distinct or statistically significant, especially taking the mean differential into account.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHANON A. FOLEY whose telephone number is (571)272-0898. The examiner can normally be reached on M-F 5:30 AM-3 PM, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael P. Woodward can be reached on (571) 272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Shanon A. Foley/
Primary Examiner
Art Unit 1619